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Addressing troubled financial institutions' problems

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Text

Addressing troubled financial institutions' problems

SUMMARY OF:

[Directive 2014/59/EU](#) establishing rules for the recovery and resolution of credit institutions and investment firms

WHAT IS THE AIM OF THE DIRECTIVE?

- It sets out new rules to deal with troubled financial institutions because many [European Union \(EU\) Member States](#) had to inject public money into their banking systems to rescue banks in the wake of the 2008 financial crisis.
- It aims to avoid **bailouts** that involve the use of taxpayers' money in future cases of bank failure.
- It establishes **common EU rules for the recovery and restructuring of failing banks**.

KEY POINTS

Banks in difficulties – prevention

- Each bank has to prepare a **recovery plan** and submit it to the national competent authority.
- The national resolution authority also has to draw up a **resolution plan** in case recovery is not effective and restructuring (resolution) is necessary.
- Both plans set out the action to be taken if a bank runs into difficulties leading to its failure.

Banks in a difficult financial situation – early intervention

When a bank is in a difficult financial situation, the national competent authority has the power to intervene, for example by appointing a temporary administrator of the bank.

Failing banks – restructuring (resolution)

- If the bank's downward spiral continues, the national resolution authority has a variety of powers to minimise the cost of its failure to taxpayers. The most important power is to require the private sector to bear the costs first.
- This **bail-in mechanism**, which marks a change of tack compared to the public bailout tool, entered into force at the latest in **January 2016**. Member States could decide to incorporate the bail-in tool into their legal systems before this date.
- If a bank collapses, **shareholders** are first in line to cover the restructuring costs. Next, **creditors** are asked to contribute, with **non-guaranteed depositors** (holding deposits over €100,000) stepping in last. Amending Directive (EU) [2017/2399](#) harmonised the rules on bank creditors' hierarchy through the creation of a **new class of senior non-preferred debt** that ranks in insolvency above own-funds instruments and subordinated liabilities, but below other senior liabilities. This new statutory insolvency ranking for senior non-preferred debt aims to improve the application of the bail-in tool with respect to debt instruments that are eligible for the minimum requirement for own funds and eligible liabilities. It will also help with the implementation in the EU of the [G20 Total Loss-Absorbing Capacity \(TLAC\) standard](#) for [global systemically important financial institutions](#).
- The shareholders and creditors have to contribute to the losses of the failing institution. They cover the losses up to at least 8% of the total liabilities (debts or obligations) of the bank undergoing a restructuring plan. If there are still losses to cover, the resolution fund (see below) can intervene. Other powers national authorities have include the possibility to sell the institution undergoing restructuring or merge it with another one.
- To implement the standard on TLAC developed by the [Financial Stability Board](#) in November 2015, amending Directive (EU) [2019/879](#) introduced new rules concerning the loss-absorbing and recapitalisation capacity of credit institutions and investment firms.
- Amending Directive (EU) [2022/2556](#) aligns the provisions of the directive, and several other related directives, with the requirements on ICT risk for financial entities set out in the digital operational resilience of the financial sector (DORA) regulation, Regulation (EU) [2022/2554](#) (see [summary](#)).

National resolution funds to provide financial support for banks' restructuring plans

Each Member State has to establish a **national resolution fund** financed in advance by credit institutions and investment firms established in its territory. This fund is to be used to **finance the restructuring of a failing bank**.

Implementing acts and delegated acts

Between 2015 and 2023, the [European Commission](#) adopted a series of **implementing and delegated acts** in relation to Directive 2014/59/EU. These include:

- Delegated Regulation (EU) [2015/63](#) on:
 - calculating and adjusting the risk profile of institutions and the contributions to be paid by banks to resolution funds,
 - information that banks must provide so that their contribution to a resolution fund can be calculated;
- Delegated Regulation (EU) [2016/778](#) on:

- the circumstances and conditions under which an institution's repayment contributions to a resolution fund may be partially or entirely postponed,
- the criteria used to determine which of the institution's activities, services and operations are essential to the economy, and
- the criteria used to determine core business lines and associated services;
- Delegated Regulation (EU) [2016/860](#) further specifying the circumstances in which exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of Directive 2014/59/EU;
- Implementing Regulation (EU) [2016/911](#) on the form and the content of the description of group financial support agreements;
- Implementing Regulation (EU) [2016/962](#) on uniform formats, templates and definitions for the competent authorities to use when identifying and transmitting information from the competent authorities and resolution authorities to the [European Banking Authority \(EBA\)](#);
- Delegated Regulation (EU) [2016/1075](#) on, among other things, standards for the content of recovery plans, resolution plans and group resolution plans;
- Delegated Regulation (EU) [2016/1400](#) on the minimum elements of a business reorganisation plan and the minimum contents of the reports on its implementation;
- Delegated Regulation (EU) [2016/1401](#) on standards for methodologies and principles on the valuation of liabilities arising from derivatives;
- Delegated Regulation (EU) [2016/1450](#) on criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities;
- Delegated Regulation (EU) [2016/1712](#) on standards for information on financial contracts;
- Delegated Regulation (EU) [2017/867](#) on classes of arrangements to be protected in a partial property transfer;
- Delegated Regulation (EU) [2018/344](#) on regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution (valuation 3);
- Delegated Regulation (EU) [2018/345](#) on regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities;
- Delegated Regulation (EU) [2019/348](#) on regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions;
- Implementing Regulation (EU) [2021/622](#) on implementing technical standards with regard to templates, instructions and methodology for reporting on the minimum requirement for own funds and eligible liabilities to the European Banking Authority;
- Delegated Regulation (EU) [2021/1118](#) on regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Directive 2013/36/EU and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under the directive;
- Delegated Regulation (EU) [2021/1340](#) on regulatory technical standards determining the content of the contractual terms on recognition of resolution stay powers; and
- Delegated Regulation (EU) [2021/1527](#) on regulatory technical standards for the contractual recognition of write down and conversion powers.

FROM WHEN DO THE RULES APPLY?

- **Directive 2014/59/EU** had to be [transposed](#) into national law by 31 December 2014 and the rules have applied since 1 January 2015.

- **Amending Directive (EU) 2017/2399** had to be transposed by 28 December 2018 and the rules have applied since that date.
- **Amending Directive (EU) 2019/879** had to be transposed by 28 December 2020. Its rules have applied in the Member States from that date, with the exception of the rule on the public disclosure of the minimum requirement for own funds and eligible liabilities, which applies from 1 January 2024 or later.
- **Amending Directive (EU) 2022/2556** has to be transposed into national law by 17 January 2025 and the rules apply from that date.

BACKGROUND

For further information, see:

- [Bank recovery and resolution](#)  (European Commission).

MAIN DOCUMENT

Directive [2014/59/EU](#) of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, pp. 190–348).

Successive amendments to Directive 2014/59/EU have been incorporated into the original text. This [consolidated version](#) is of documentary value only.

RELATED DOCUMENTS

Directive (EU) [2022/2556](#) of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector (OJ L 333, 27.12.2022, pp. 153–163).

Regulation (EU) [2022/2554](#) of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (OJ L 333, 27.12.2022, pp. 1–79).

Commission Delegated Regulation (EU) [2021/1527](#) of 31 May 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards for the contractual recognition of write down and conversion powers (OJ L 329, 17.9.2021, pp. 2–5).

Commission Delegated Regulation (EU) [2021/1340](#) of 22 April 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards determining the content of the contractual terms on recognition of resolution stay powers (OJ L 292, 16.8.2021, pp. 1–3).

Commission Delegated Regulation (EU) [2021/1118](#) of 26 March 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for

resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive (OJ L 241, 8.7.2021, pp. 1–6).

Commission Implementing Regulation (EU) [2021/622](#) of 15 April 2021 laying down implementing technical standards for the application of Directive 2014/59/EU of the European Parliament and of the Council with regard to uniform reporting templates, instructions and methodology for reporting on the minimum requirement for own funds and eligible liabilities (OJ L 131, 16.4.2021, pp. 123–136).

Commission Delegated Regulation (EU) [2019/348](#) of 25 October 2018 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the impact of an institution's failure on financial markets, on other institutions and on funding conditions (OJ L 63, 4.3.2019, pp. 1–11).

Commission Implementing Regulation (EU) [2018/1624](#) of 23 October 2018 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council, and repealing Commission Implementing Regulation (EU) 2016/1066 (OJ L 277, 7.11.2018, pp. 1–65).

See [consolidated version](#).

Commission Delegated Regulation (EU) [2018/344](#) of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodologies for valuation of difference in treatment in resolution (OJ L 67, 9.3.2018, pp. 3–7).

Commission Delegated Regulation (EU) [2018/345](#) of 14 November 2017 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for assessing the value of assets and liabilities of institutions or entities (OJ L 67, 9.3.2018, pp. 8–17).

Commission Delegated Regulation (EU) [2017/867](#) of 7 February 2017 on classes of arrangements to be protected in a partial property transfer under Article 76 of Directive 2014/59/EU of the European Parliament and of the Council (OJ L 131, 20.5.2017, pp. 15–19).

Commission Delegated Regulation (EU) [2016/1712](#) of 7 June 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards specifying a minimum set of the information on financial contracts that should be contained in the detailed records and the circumstances in which the requirement should be imposed (OJ L 258, 24.9.2016, pp. 1–7).

Commission Delegated Regulation (EU) [2016/1450](#) of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria relating to the methodology for setting the minimum requirement for own funds and eligible liabilities (OJ L 237, 3.9.2016, pp. 1–9).

Commission Delegated Regulation (EU) [2016/1401](#) of 23 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with

regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives (OJ L 228, 23.8.2016, pp. 7–15).

Commission Delegated Regulation (EU) [2016/1400](#) of 10 May 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan (OJ L 228, 23.8.2016, pp. 1–6).

Commission Delegated Regulation (EU) [2016/1075](#) of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, pp. 1–71).

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Commission Implementing Regulation (EU) [2016/962](#) of 16 June 2016 laying down implementing technical standards with regard to the uniform formats, templates and definitions for the identification and transmission of information by competent authorities and resolution authorities to the European Banking Authority according to Directive 2014/59/EU of the European Parliament and of the Council (OJ L 160, 17.6.2016, pp. 35–49).

Commission Implementing Regulation (EU) [2016/911](#) of 9 June 2016 laying down implementing technical standards with regard to the form and the content of the description of group financial support agreements in accordance with Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 153, 10.6.2016, pp. 25–27).

Commission Delegated Regulation (EU) [2016/860](#) of 4 February 2016 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 144, 1.6.2016, pp. 11–20).

Commission Delegated Regulation (EU) [2016/778](#) of 2 February 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to the circumstances and conditions under which the payment of extraordinary ex post contributions may be partially or entirely deferred, and on the criteria for the determination of the activities, services and operations with regard to critical functions, and for the determination of the business lines and associated services with regard to core business lines (OJ L 131, 20.5.2016, pp. 41–47).

Commission Delegated Regulation (EU) [2015/63](#) of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements (OJ L 11, 17.1.2015, pp. 44–64).

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